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Federal Communications Commission  
Office of the Secretary

Washington State

**Dear Fellow-Citizen Commissioners of the FCC:**

Recent years have seen an onslaught against public ownership regulation. The media industry, which produces and distributes information content, has championed calls for "deregulation." They say that ownership regulation is cumbersome and obsolete. It has been outgrown by technology, and may not be needed at all. Some have even suggested that free market enterprise might be in danger should the FCC fail to remove media ownership regulation. They plant these claims on two sibling themes; freedom and ownership. I must contest this ground.

It is ironic that the issue of ownership would exist in media. Media, most simply defined, are the means of moving information. Media is a specialized aspect of transportation. The airwaves move ideas as the air space moves things. It makes sense to compare media infrastructure to roads, railroads, and airports, because both facilitate movement. More importantly, they are both accountable to one American ideal; freedom.

What is freedom in a method of transportation? It is equal and non-discriminating access, maximum commodity choice, and protection of civil liberties when moving an object or an idea. There is nothing about private ownership that necessarily limits these freedoms. Private and hybrid public/private ownership has coexisted with competition, accessibility, and personal freedom in many instances. Majority private ownership of telephone networks no longer means great sacrifices in access and choice. This is because public regulation has stepped forward to enforce the public interest of freedom in private telephone enterprise.

Private ownership without public interest regulation gravely endangers freedom. What if, for example, all roads were privatized? The Department of Transportation could declare the street outside your home to be a "transportation service", with fees and usage determined by the company that built it. That company could tell you what type of car to drive, how you could drive, how many times you could drive, and charge you whatever they wished. Clearly, private ownership of roads would be ridiculous without public interest protections. Yet it would be similar to the current condition of broadband cable infrastructure, the privatized road that carries information to and from our homes. It would preclude the access, choice, and civil liberties protections that define transportation freedom.

Some would say that it is unfair to call broadband cable a "privatized road," that broadband cable competes with DSL and wireless technologies. Thus, its local monopolies have competition. This is like telling the Bostonians who wanted a choice in tea to drink water instead. Dedicated broadband wiring has far greater capacity and

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accessibility than any alternatives. It is the real McCoy of data distribution, and we must not be tricked into upholding it to any lower standard. When there is no local choice in broadband cable, it has no competition. If your street is a private monopoly, it makes no difference how many sidewalks there are.

One cable provider, Comcast™, agrees. In a television ad to promote its arrival in western Washington as a result of the merger with AT&T Broadband, Comcast highlights that its service is "faster than DSL." Comcast's marketing centers on an emphasis that there is no comparable alternative to its infrastructure; there is no competition with what it offers. It minces no words in reminding consumers that nothing beats broadband cable.

Yet in testimony before the Senate's Subcommittee on Antitrust, Comcast's president Brian L. Roberts promised that there would be competition resulting from its merger. He praised the benefits of "facilities based competition" that consolidated ownership would bring. Perhaps Comcast forgot about this "facilities based competition" in marketing itself against technically inferior DSL, or perhaps there is no competition within its facilities.

To impress consumers, Comcast shows that it is the lion of broadband infrastructure. To impress the government, Comcast shows that this lion competes with a mouse, or pretends that there's another king in the jungle. We must not let foggy language of freedom and competition cloud the real savanna of broadband monopoly. We must take notice when a company promises competition and then markets monopoly.

The information age brings a grand contradiction. The high-capacity infrastructure that brings objects to our homes and businesses is public, while the high-capacity infrastructure that brings ideas is private. I can choose from a wide selection of cars and drive on an accessible network of roads with legally protected civil liberties, yet I am denied the same access, choice, and protection in transporting ideas. Why? Would such information freedom be *too free*?

Despite claiming that ownership consolidation is a rainbow of freedom and choice, the media industry depicts a dark gloom if Americans are *too free* to exchange information. In item after item of legislation, they seek to increase "enforcement" of intellectual property to preserve the information commodity. Government also warns of Americans being *too free* to exchange information. Many law enforcement agencies advance the view that if information can not be monitored, it is a danger to national security and the public interest. Thus, both media and government interests claim that accessible and civil-liberties-protected broadband would be dangerous. We must not let medieval doomsaying become the mantra of the 21st century.

First, the media's foreseen calamity: If there is not privatized control of information infrastructure, it will herald the death of the information commodity. Rampant illegal duplication of copyrighted audio, video, and software will destroy the media industry. The de facto use of high capacity public information sharing is illegal, and federal

protection of individual access and privacy in information exchange would be accompaniment in destruction of free market enterprise. Is this scenario real?

I have never heard the pharmaceutical industry say that the existence of public roads has meant the death of the drug commodity. It is true that some use public roads for illegal drug transport, and that sometimes those drugs infringe on legal patents. Yet it has never been suggested that the capacity, accessibility, or personal freedom of public roads should be limited to preserve legal commodities. It has never been suggested that public roads are a *guilty medium*. Why should information transport be any different?

It could be argued that automobiles are dangerous. They enable people to move themselves and objects quickly and over great distances. They are relatively anonymous. Only a tiny fraction can be subjected to warranted searches. They can access an enormous network at millions of points. Automobiles can facilitate a great deal of illegal activity. Is it time to privatize roads or remove the freedoms that every American enjoys? Should roads be owned by a small group of interests with legitimate physical commodities? How would other potentially legitimate physical commodities access them? Does the government abet the end of market freedom by failing to build roads that monitor every vehicle at every intersection?

We must apply these questions to the roads of information in America. We must ask--audaciously--why the roads for our minds should be any less free than the roads for our bodies.

Some will attempt to debunk this comparison, noting that infringing information can be infinitely duplicated and transported. It is true that a computer file can be copied and distributed worldwide very quickly. Yet, so can many illegal objects. It is wrong to exaggerate the difference between an MP3 file and a marijuana seed. Both are potentially illegal commodities that find very quick distribution. The medium is not the issue. There's a secret that media doomsayers don't want us to know; *instant and widespread* duplication is not the *real* danger to their information commodities. It is competition.

Imagine if it were possible to have unlimited distribution of video and audio. Every American could have a TV and radio station. All musicians could instantly distribute their music. All filmmakers could instantly distribute their work. Any individual with the inclination could deliver audio or video to any number of others very accessibly.

Technologies that would enable this already exist. Fiber-to-the-curb broadband and digital cell phone networks with thousands of simultaneous digital audio channels are both established options. In fact, running fiber to homes and offices is much cheaper than paving roads to them. Why, then, is the reality of technology so far behind its potential?

America has left its tender broadband future to the wolf-shepherd of media doomsayers. While claiming disaster if duplication goes unchecked, they know that the real danger to the information commodity is not illegal distribution of copyrighted works, but distribution period. The real danger is the prospect of every American suddenly being

able to do what only a handful could before. Companies like Disney™, AOL Time Warner™, General Electric™, Fox™ and Viacom™ have never profited from merely owning copyrighted works. They have profited from controlling (often through ownership) the means of distributing them. It is the distribution commodity, not the information commodity, that accessible, competitive, and civil-liberties-protected broadband threatens.

At the dawn of the 20th century, J.P. Morgan owned most of the railroads in the anthracite coal mining industry. It did not matter how profitable the actual mines were, because they all paid enormous fees to access monopolized distribution. It was not the physical commodity, but its distribution that yielded maximum returns. If a technology had arrived to make physical distribution instant and universal, J.P. Morgan would have had to find a new business model; one that did not rely on scarcity of distribution.

Surrounding the dawn of the 21st century, there has been a disturbing push to sustain scarcity in information distribution, even if it means stunting the evolution of information infrastructure. Too frequently, when it would be possible to dramatically increase the information distribution power of everyone, technological implementation only enhances the distribution power of a few.

Cable monopolies arrived as a method to sell one-way distribution. When coax networks underwent upgrades to work "backwards" and digitally with the arrival of broadband cable, there was seldom interest in extending fiber out far enough to sustain a symmetrical "upstream." Making the power of distribution universal would reduce its value as a commodity. The same thinking applies to the NAB's efforts to limit station quantity in future radio formats. If broadcasting an audio signal became as easy as shouting out a window, it would be hard to monopolize the distribution commodity.

Brother and Sister commissioners: If Gutenberg had sold the printing press to a small group of interests, and had it remained a tool of the few forever, what toll would be paid by mankind? Would there have been a Newton? A da Vinci? An Einstein? Would the following five centuries have resembled the previous two millennia, or would modern times be somehow catalyzed without the exchange of ideas?

When private interests seek to keep information distribution in the hands of a few, when they shun technologies that would increase radio capacity, when they claim that symmetrical broadband is impossible, when they build a valley and say it can only hold a puddle of voices; they hijack the ship of human progress by owning the ocean and draining it into their coffers. They abort countless Lincolns, countless Gandhis, and countless Martin Luther Kings by suppressing the modern printing press of digital infrastructure at its inception. This is the media industry's version of freedom. This is the media industry's version of free enterprise. I ask that you uphold the American one.

Secondly, I must speak to government doomsayers who suggest that accessible, competitive, and civil-liberties-protected information distribution is dangerous if it can not be monitored or made individually accountable. Many claim that law enforcement and the public interest of safety must moderate the freedoms of information distribution.

I'm always skeptical when meeting the cry that freedom is a beast best leashed for the public good.

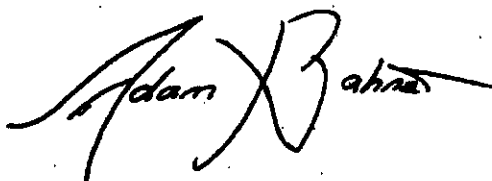
What is public interest when it comes to information distribution? Public regulation should defend exchange of information that is open, unmonitored, anonymous, accessible, capacious, and accountable only to individuals.

Some will ask the question: How do you hold individuals accountable in an anonymous medium? But I reverse this question: How do you hold governments accountable in a monitored medium? It is accessible, frank, and anonymous discourse that forms the foundation of self-government. What is the greater danger to public safety? Unaccountable individuals, or an unaccountable government? We should err with the latter. When Americans died for revolution, it was not accountable individuals they saw in that star-spangled banner, but an accountable government. My flag still stands for them. So does, I hope, the FCC's.

In closing, every action taken by the FCC must answer a single question. Does it maximally expand the best tools of information distribution to the largest possible portion of American citizenry? Does it enlarge the stage or merely unify the existing chorus? Were the FCC to remove media ownership regulation as it exists today, it would further unify the tiny chorus and ignore the millions of voices who have been denied a stage. The FCC must rise to enthrone the deposed notes in the American song, expanding the wrongly stunted precipice of discourse into a sky that crowns every citizen a mass-broadcaster of their own American dream.

Our posterity is in your hands, and you must not let imagined dangers of public regulation and un-American distortions of freedom betray them to a past of kings and the few.

With sincerest hope that the mirror of tomorrow reveals a different today,

A handwritten signature in black ink, reading "Adam Bahner". The signature is stylized, with a large, looped "A" and a cursive "Bahner".

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